

MINUTES OF THE REGULAR MEETING
OF THE
PLANNING AND ZONING COMMISSION

April 12, 2018
9:30 a.m.

Board of Supervisors Auditorium
301 W. Jefferson Street
Phoenix, Arizona

MEMBERS PRESENT:

Ms. Jennifer Ruby, Chairperson
Mr. Nathan Andersen, Vice Chairman
Mr. Greg Arnett
Mr. Bruce Burrows
Mr. Broc Hiatt
Ms. Francisca Montoya

MEMBERS ABSENT:

Mr. B.J. Copeland
Mr. Michael Cowley
Mr. Jimmy Lindblom
Mr. Robert Zamora

STAFF PRESENT:

Mr. Darren Gerard, Planning Deputy Director
Ms. Rachel Applegate, Senior Planner
Ms. Jaclyn Sarnowski, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:

Mr. Wayne Peck, Deputy County Attorney
Mr. Robert Swan, County Attorney

CONTINUANCE:

Z2017115, MCP2018001, Z2018013

CONSENT:

S2016001

REGULAR:

Z2016091

Meeting called to order at 9:36 a.m.

Chairperson Ruby welcomed Commissioner Montoya from District 5 to the Planning and Zoning Commission.

Chairperson Ruby asked if there were any changes or comments to the March 8 minutes, none.

COMMISSION ACTION: Chairperson Ruby approved the March 8, 2018 minutes as written.

CONTINUANCE AGENDA

Z2017115 (Cont. from 3/8/18) – Special Use Permit

District 1

Applicant: Paul Almond, Almond ADG
Location: Generally located approximately 800' north of the northeast corner of Arizona Ave. and Hunt Hwy. in the Chandler area
Request: Special Use Permit (SUP) to allow a recycling center in the C-3 zoning district – 26423 S. Arizona Ave. Recycling Center

MCP2018001 – Military Compatibility Permit

District 4

Applicant: William F. Allison, Withey Morris, PLC
Location: Generally located at the southwest corner of Loop 303 and Glendale Ave. in the Glendale area
Request: Modification of Conditions to MCP2017001 – EH KEMF Cotton 303, LLC

Z2018013 – Plan of Development

District 4

Applicant: William F. Allison, Withey Morris, PLC
Location: Generally located at the southwest corner of Loop 303 and Glendale Ave. in the Glendale area
Request: Plan of Development to allow off-premise signs — EH KEMF Cotton 303, LLC

Ms. Applegate presented the continuance agenda.

COMMISSION ACTION: Commissioner Arnett motioned to continue indefinitely Z2017115 and to continue MCP2018001 and Z2018013 to April 26, 2018. Commissioner Burrows second. Approved to continue 6-0.

CONSENT AGENDA

S2016001 – Preliminary Plat

District 4

Applicant: KSE Design Group, PLC
Location: Generally located on the southeast corner of Happy Valley Rd. and El Granada Blvd.
Request: Preliminary Plat for 146 lots and 11 tracts in the R1-6 RUPD PAD and R-4 RUPD PAD zoning districts – Rancho Cabrillo portion of parcels K & L

Ms. Applegate presented the consent agenda.

COMMISSION ACTION: Commissioner Burrows motioned to approve S2016001 with conditions 'a' – 'p'. Commissioner Arnett second. Approved 6-0.

- a. The Final Plat shall be in substantial conformance with the Preliminary Plat entitled "Preliminary Plat for Rancho Cabrillo Parcel L and a Portion of

Parcel K" consisting of 15 full-size sheets, dated stamped received March 28, 2018, except as modified by the following conditions.

- b. Development and use of the site shall comply with the Narrative Report entitled "Rancho Cabrillo Parcel L & a Portion of Parcel k", consisting of 18 pages, dated stamped received March 28, 2018, except as modified by the following conditions.
- c. Development of the site shall be generally consistent with the Landscape Plan entitled "Rancho Cabrillo – Parcel K & L", consisting of 6 pages, dated stamped received February 2, 2018, except as modified by the following conditions.
- d. The following Environmental (MCESD) condition shall apply:
 - 1. The applicant must submit two applications to MCESD directly for water and sewer Approval To Construct (ATC).
- e. Prior to Final Plat and Infrastructure Permit submittal, the applicant is required to attend a pre-submittal meeting in order to coordinate the permitting process for improvements, fees, and assurances associated with the subdivision. Intake of the Final Plat and Infrastructure permit shall be by appointment only.
- f. Concurrent with submittal of Final Plat, Improvement Plans shall be submitted to the Planning and Development Department.
- g. After Final Plat recordation and prior to any zoning clearance for building permits, the applicant shall obtain a final Grading and Drainage and Infrastructure permit from Maricopa County.
- h. Prior to Final Plat approval, Water and Wastewater Plans shall be submitted to and approved by the Maricopa County Department of Environmental Services (MCESD) subject to their procedures.
- i. Specific roadway cross-sections and pavement sections are not approved as shown on the Preliminary Plat. The number and width of lanes, including turn and auxiliary lanes, as well as pavement thickness, will be approved on construction improvement plans in conjunction with the Final Plat, in compliance with the Traffic Impact Statement (TIS) approved by the Maricopa County Department of Transportation (MCDOT).
- j. Prior to Final Plat approval or issuance of a grading permit, developer(s) and/or builder(s) shall establish emergency fire protection services, covering all real property contained within the project area during course of construction and shall obtain a 'will serve' letter substantiating coverage from North County Fire and Medical District. This information shall be included in the narrative report for the Final Plat and the associated public

report for the subdivision. The Final Plat shall contain a note referencing the will serve letter.

- k. The applicant/owner shall comply with the standard assurance provisions as set forth in the Maricopa County Subdivision Regulations.
- l. The applicant/property owner shall submit a 'will serve' letter from EPCOR for water & wastewater services for the project site. A copy of the 'will serve' letter shall be required as part of the initial construction permit submittal.
- m. Preliminary Plat approval shall expire two (2) years from the date of Commission approval. Any request for an extension of time shall be submitted prior to the expiration date and may be administratively approved in accordance with the Maricopa County Subdivision Regulations.
- n. The property owner/s and their successors waive claim for diminution in value if the County takes action to rescind approval due to noncompliance with conditions.
- o. The Final Plat shall include a note that states that there shall be no further division of land or delineation of parcels within the area of this subdivision plat without approval by the Board of Supervisors.
- p. Compliance with DMP2006009 & Z2006069 conditions/stipulations of approval.

REGULAR AGENDA

Z2016091 – Special Use Permit

District 3

Applicant: Daniel Istrate, Kontexture, LLC
Location: 512 W. Yearling Rd., located 330' east of 7th Ave on the north side of Yearling Rd.
Request: Special Use Permit (SUP) to operate a Behavioral Health Residential Facility for up to 16 residents – Yearling Behavioral Health Residential Facility

Ms. Sarnowski presented Z2016091 and noted the site will operate as a 24-hour treatment facility with up to five staff during the day and two at night. The residence contains nine bedrooms, eight will be reserved for patient residents with double occupancy. One of the bedrooms will be utilized by staff. Per the applicant the driveway and parking areas will be paved with asphalt. No other upgrades or changes will be done to the physical layout. There is a variance on the property under BA2003128 for a single-family residence that vary setbacks on the north, east, south and west sides of the property. There are currently two land use cases on the property, LU20140044 confirming in December 2014 that a Group Home for the elderly over the age of 55 for up to 10 residents is a permitted use in a Rural-43 zoning district. LU20170036 confirming a Group Home for the elderly and

disabled for up to 10 residents is a permitted use in the Rural-43 zoning district in July 2017. LU20170036 was a result of a compliance agreement that was signed by the property owners for a code violation that was initialized by the Planning and Development Department alleging the site was for residents who had undergone drug rehabilitation and behavioral health treatment which does not fit the Maricopa County Zoning Ordinance (MCZO) definition of a Group Home. It was determined by staff through inspections that the site was not in compliance with the executed compliance agreement or the MCZO. The original application for Z2016091 was for a Group Care Facility for the elderly up to 16 residents which requires a Special Use Permit (SUP) as 10 is the maximum number of residents for a Group Home as of right under the MCZO. The application has been modified for a Group Care Facility for behavioral health for up to 16 residents. Staff has received a number of opposition letters from the surrounding neighbors with concerns of a behavioral health facility operating in a rural residential neighborhood in proximity of neighborhood children, roadway maintenance, parking at the site, environmental concerns, and concerns of fire protection as Rural Metro is no longer servicing this area. Staff received additional opposition letters since writing the staff report and they are included in a handout memo. In total staff has received 32 letters of opposition including a petition signed by 63 residents of the Union Hills Estate neighborhood. There are no letters of neighborhood support from the neighborhood, but staff received three letters of support from facility staff. Through the reviewing process County agencies are reviewing the site plan for technical details associated with their discipline. The Sheriff's Office and Engineering Department had no comments or concerns regarding the site plan. It was confirmed by the Environmental Services Department that the septic tank is not in the correct location on the site plan. A revised site plan indicating the correct location of the septic tank will be needed, and is outlined in condition 'a'. Reviewing County agencies are not commenting on the land use. Staff recommends denial of the SUP application. A Group Home is a use as of right in a Rural-43 zoning district. Rural-43 is a rural single-family residential district with lots one acre or greater. To qualify as a Group Home, the residents must be no more than 10, must be a certain classification, including minors, disabled or over the age of 55 and they must live as a single-housekeeping unit creating a family-like environment. It's very difficult to differentiate the operation of a Group Home from any other single-family residence. Once the residents fail to live as a single-housekeeping unit and where treatment is given, the property loses its character as a single-family residence and takes on the character of a health care institution. Health care institutions are not permitted in the Rural-43 zoning district. They need an SUP. The property has been issued a license from the Arizona Department of Health Services (ADHS) to permit the operation of a Residential Behavioral Health Facility. The regulations covering such a facility defined it as a health care institution and residents are required to be given treatment as a condition of the operation of such facility. Inspections of the ongoing operation on the property have revealed the residents do not live as a single-housekeeping unit. In the past the facility has been used for meetings with persons that do not work or reside at the facility and if the SUP was approved these kinds of meetings could continue. Staff believes such a facility in a single-family area is contrary to the intent and purpose of the Maricopa County Comprehensive Plan and Zoning Ordinance. They do not meet the Rural-43 zoning district setbacks. A variance was granted permitting the current setbacks which was for a single-family residence and not a Group Care Facility. The operation of a health care institution at this location is an inappropriate land use for the area. The fundamental

purpose of planning is to help ensure public health and safety. The Maricopa County Comprehensive Plan 2030 helps to meet this by supporting compatible land uses, environmental quality, and safe efficient practical development patterns. Some of the County's land use goals are to achieve balance and efficient development patterns to protect the public health, safety and well-being. A commercial like Group Care Facility for behavioral health for up to 16 residents in the Rural-43 zoning district adjacent to single-family residences does not further these goals and will adversely impact the harmony of the residential neighborhood. Staff recommends denial.

Commissioner Arnett asked in terms of the zoning and what's there now, is the use the concern and to bring it into compliance, but as a legal use of 10 or less and not a behavioral health, and is it the position of staff that we are okay with the setbacks and some of the other challenges on the property? Mr. Gerard said potentially yes, the reason there is a zoning violation the facility has not operated in accordance with their existing zoning entitlement. Rural-43 allows single-family residences, Group Homes that are single-family like settings and they are operating a Group Care Facility. In order for their current operation to comply they must obtain a Special Use Permit, otherwise they need to cease and desist the Group Care Facility operation.

Chairperson Ruby said the historic land use rulings first started with a Group Home up to 10 residents and elderly over 55 years, then it was expanded by adding disabled. Ms. Sarnowski said correct.

Mr. Spencer Scharff with Goddard Law said he is representing the property owners and Ascend Behavioral Health and Wellness. The Ranas purchased the Yearling home in 2009 and lived there with their children, and after their children moved away they moved out and decided to rent the home. There was a land use case for a Group Home and it was initially used for an Assisted Living Group Home. They also received a land use approval for a Group Home with individuals with disabilities in 2017. In 2016, Ascend Behavioral Health and Wellness became the Rana's tenant. Ascend is licensed and regulated by the Arizona Department of Health Services (ADHS) and last year they invited Dr. Michael Franzak to the property, and he is the former chief clinician of ADHS where he used to regulate and inspect these type of facilities for 11 years. After his inspection he said this was one of the best Group Homes he has ever seen in his entire career. Individuals with serious mental illness are not dangerous individuals, if they were they would not be placed with Ascend. They are members of the community and due to their conditions struggle to live independently. Ascend prides itself in providing residents a safe structured environment to grow and thrive. The Ranas are proud that their beautiful home can now provide a home for some of the vulnerable members of the community which are entitled to respect and dignity. One of the main concerns he's heard that this is a strictly residential neighborhood, but there are commercial operations on the County Island zoned Rural-43 between 7th Street and 19th Avenue, and Jomax to Alameda. Based on public records and driving around the public streets there is an adjacent County Island two miles away from the Yearling property and it is zoned Rural-43 with a number of industrial operations going on. He identified two chemical companies, a drilling company, a custom golf club company, a clothing company, three landscaping construction companies, an underground construction company, a pottery studio and school, a palm tree nursery, a stone and rock crushing

business, a bee removal and produce operation, a traffic sign and barricade company, and a maintenance yard for the Arizona Department of Transportation. It is not fair to say this is strictly a residential neighborhood. Ascend is not suggesting to change anything about the outward appearance of the property, and they won't even put up a sign. Another objection point in the staff report, "staff believes that such a facility in a single-family area is contrary to the intent and purpose of the Maricopa County Comprehensive Plan and Zoning Ordinance." This is what the commissioners signed up to follow as the zoning commission. The County ordinance provides principle uses in the ordinance for Rural-43, "the principle uses permitted in the zoning district include both farm, and non-farm residential uses, farms and institutional uses." Institutional uses are a principle use of the ordinance, and we aren't even an institutional use, we are a non-farm residential use. A Residential Group Care Facility is clearly consistent with principle uses outlined in the ordinance. Vision 2030 outlines the goals and policies of Maricopa County Zoning Ordinance, and the principles emphasized is a consistent land use. The word consistent or consistency is mentioned 53 times. The department's recommendation to deny this application is inconsistent with the department's prior recommendation and this Commission's own adoptions. Based on his research, this Commission and the Board of Supervisors have already approved 29 Special Use Permits for Group Care Facilities in residential zoning districts in the last 35 years. Only nine of the 29 were located in multi-family zoning districts and the rest were in single-family zoning districts, and 15 of those were approved to operate in Rural-43. In February 2015, this Commission unanimously approved a 30 year Special Use Permit for a 148 resident Group Care Facility in a single-family zoning district R1-8 zoning. Then in August 2015, this Commission unanimously approved an SUP for a 30 patient Group Care Facility in R1-35 which was composed of three neighboring single-family homes, and it was opposed by the City of Mesa. Their objection was "the subject properties are within the City of Mesa General Plan development of low density residential 0-1 dwelling units per acre. The request would not be in conformance with the intent of the General Plan designation." Mr. Scharff said this sounds similar to the objection that Maricopa County presented to this Commission for our land use permit. The County staff presented a report to you specifically stating, "staff disagrees the private street is developed with single-family homes, and the homes along the street would be operated as a Group Care Facility for elderly residents. The street would maintain its residential appearance and density." This permit is not asking to change the residential appearance of this facility, and they raise an objection with private roads, but aren't concerned of the private road issue here. In February 2018, this Commission unanimously approved an SUP for a Behavioral Health Inpatient Facility in Rural-43, it was the Remuda Ranch SUP, and like the Yearling home the facility is also licensed by the Arizona Department of Health Services. Remuda Ranch is a Behavioral Health Inpatient Facility and is a health care institution that provides continuous treatment to an individual experiencing a behavioral health issue that causes the individual to suffer harm that significantly impairs the individual's judgment, reason, behavior, or capacity to recognize reality. Where a Behavioral Health Residential Facility is a health care institution that provides treatment to an individual experiencing a behavioral health issue that limits the individuals ability to be independent. Mr. Scharff said he is not suggesting that this Commission made a mistake two months ago, nor did the Board of Supervisors who also approved the Remuda Ranch SUP. As long as the facility doesn't change the residential appearance, it is consistent and within the zoning ordinance

and within 2030's idea of what should be here. Another point he said is true, this facility has in the past held group events at the location with people that don't live there. One of the events was a Thanksgiving dinner held on the property for the residents and their families, and without a doubt Thanksgiving dinners will be held here if this permit is granted. Some of the other group meetings were Christmas dinners and Easter dinners. Events you would want to have at your own homes and expect to have at a residential home. Granting this Special Use Permit will not alter the residential appearance of the Yearling property or the surrounding neighborhood. Unlike other Group Care Facilities this Commission voted to grant Remuda Ranch, Merrill Gardens, and Crimson Peaks all with signs at those facilities. We do not want a sign and do not want anyone to know we are there because we don't want to be a burden on the neighbors. He hopes after hearing his view and position, the neighbor's would rally behind supporting this excellently run residential facility in their neighborhood. The Ranas and Ascend Behavioral Health both are united in belief that one should love thy neighbor as one self, and this is why they do what they do.

Mr. Dave Fouts said he lives up the street from the facility, and noted this is getting out of control with too much emphasis on commercial businesses miles away from us. Most of what he said other businesses has nothing to do with this neighborhood. Mr. Fouts said he has lived here for 20 years and raised his kids in this community, and it is purely residential. There is one church which is an asset to the community, and the farm nobody has a problem with it. Half the neighbor's buy their vegetables and honey there, it's a nice place and they are very nice neighbors. This mental health facility is not, this is a big business for profit and it doesn't belong in our neighborhood. He urges the Commission to drive it and look around, the pictures presented were highly selected and they don't truly represent the neighborhood. This is a nice residential neighborhood and this facility does not belong here.

Ms. Holly Geyer said she lives four houses down from the facility, and she is a physician in the field of internal medicine and addiction to medicine at the Mayo Clinic. She's lived in this community for six years. Her background in addiction has brought her from the state of Minnesota where she helped establish treatment programs across the state. She is a passionate advocate for the concept of addiction treatment programs. We're all aware of the need for addiction treatment, and SB1001 just passed a couple of months ago by our legislature to address the need for mental health in this state. We've continued as a community to open our arms to facilities that are so desperately needed for our most vulnerable population. Having been in this field as long as she has, and when it is done right it doesn't look like this, this is a concern. She has a young daughter, and this facility continually has the Sheriff's Department called on it. These individuals are not well supervised and it's been documented, and encourages the Commission to look at the police reports. There's evidence of individuals from this facility leaving the property and walking across the neighbors lawns back and forth. Then at times coming back to the facility being observed by staff members entering with no staff accompaniment. Within a three block radius there is a marijuana plant which is a huge concern, and does not believe these individuals are safely receiving the treatment necessary in a residential community with lack of supervision. She encourages the Commission to strongly consider the concerns of this community for our safety, and the safety of the most vulnerable population housed at that facility.

Ms. Pam Letner said she has lived in the community since 1980 when there was no building and no electricity across from the canal. The businesses Mr. Scharff pointed out is not close to us and not in our neighborhood. We do not have city water and we all run off of wells, and don't support much more than a rural family life. We don't have any city sewers, we have septic tanks that are built for single-family dwellings and we have no fire protection from Rural or the City of Phoenix. The road is not dedicated, not even 7th Avenue, they're not maintained by the County they are maintained by the community, and we have to hire someone to maintain the roads. There are no street lights only landscaping lights. These people in this facility wear ankle monitors and she doesn't know if they are safe. They can walk away at any time and they are not restricted to this property. She pleads with the Commission to take a look at this for the water, the septs, the fire protection they don't have, and for the neighbors.

Mr. Cliff Cyphers said he lives directly behind the facility and has been there since the Ranas moved in and moved out, and through all the processes where they leased it as a Group Care Home. It is a pretty picture the attorney presented, but he can guarantee that they have not observed Christmas dinners and Thanksgiving dinners as described. There have been at least three police reports of people walking away, one of the reports where one of the patients threw a brick through a window and a rock through another window, and threatened to kill and harm staff. He was taken away to a different facility. They are nowhere close to those other facilities that the attorney described. It is a very private community.

Mr. Doug McCarthy said he lives 2 lots away from this facility, and he would like to concur with all the statements that have been made. He is very concerned about safety for the neighborhood. This neighborhood is built out in the desert and most places don't have fences. On two separate occasions he has been asked by residents from the Ascend house for rides, and he has also seen folks around with ankle bracelets on. This is very upsetting. Ascend has operated against their approved zoning already, and asked the Commission to please do not reward them by changing this and approving this today.

Ms. Karen Cyphers said she lives directly behind Ascend Behavioral Health and it has taken over a year for Ascend to identify as to what they really are. Their original application was for an elder group home and in their narrative report it stated, "If you have an elder family member you have a place to keep them close," and it is still in their new narrative report today. The floor plan provided to the County and to the State are completely different, and the ones to the State show fire exits that don't even exist. There is a nanny's quarters and it is totally not assessable to the main house, and the floor plan depicts that they have nine bedrooms. She would hate to think they have a caregiver staying out there and if something should happen or they need medical attention. If the Commission approves the motion, it has been well documented in the past by Tariq Rana and Ascend Behavioral Health that they are willing to disregard any rules, regulations and laws to achieve their objective. After they receive their permit, what prevents them from not complying with what they agreed to? A 20 year permit and a five year review does not provide an oversight to prevent this occurrence from happening again. Any non-compliance will be treated as a violation and it may be grounds for the Commission to take action, so this leaves the community with very little

ability to take any action other than a lengthy code violation process. I'm sure our community would be very happy to see the home used as an Assisted Living Group Home for the elderly as the County has provided in the RU-43 zoning, and to take into consideration all of the issues in this community.

Ms. Melissa Swift said she lives one-third of a mile from the facility, and it is her concern that the operators of this facility have consistently not complied with rules and regulations, and there's no evidence that they will comply with any sort of rules and regulations if this is granted. The home is owned by someone who has declared bankruptcy, so there is no information as to whether or not this will be a stable facility that will continue to run. The roads to the facility is a concern where there is the Cap Canal on one side, the State Land Preserve, and then the Sonoran Preserve on the other side with very little access to the facility. On some of the overhead maps that they showed looks like it goes all the way through which isn't true, it is an impassable road except for a modified SUV. The roads regularly flood preventing people from getting in and out, and the roads are maintained by the community and the source funds from each other. The additional traffic and commercial vehicles are not conducive to the neighborhood. The owners have not complied, and they are out of compliance right now. We have gone to the people at ADHS and submitted requests to get them to stop, this is not an appropriate use.

Ms. Karie Engstler said she owns two properties in sight of this facility, and the road maintenance and their well position is very important for the Commission to understand. Even if this SUP was being requested from an elder care facility regardless what the facility is actually being used for, it is virtually impossible for this home to sustain a 16-bed residential facility. All of us consistently run out of water in the summer time, and we have to haul water in which is excessively expensive and most of have to re-drill wells every five years. This facility has not been abiding from the very beginning, and the Arizona Department of Health Services has recently given them a violation just 15 days ago. Ascend has other facilities they are running inappropriately also, they just thought they could get away with it here. We are begging the Commission to please take in consideration everything that's been presented here today.

Ms. Jane Clemons said she lived in this community since 2016, and this facility is not a Group Home. The attorney keeps calling it a Group Home, but it's a Behavioral Treatment Center running as a commercial business for profit. There are no fire services in this community, and if one of these patients are in the facility and it burns to the ground because there is no fire coverage, she's sure they will be sued. They use a well for water and for 16 people to live there, it will drain the aquifer and doesn't want to have to drill a deeper well because someone else is sucking all this water out. They have to pay for the repair of the streets, and doesn't see this facility going out and patching the potholes. The people in the facility have drug and alcohol issues and could have criminal records, and safety is an issue for everyone in the neighborhood.

Mr. James Whatley said he lives right on 19th Avenue and there are some businesses in the area, and they have been fighting to get those operating illegally out of there. The Ranas will not be living at this facility, they will have somebody else staying there to take care of those people. This a Behavioral Health Facility with sex offenders and drug

addicts. Mr. Whatley said the attorney mentioned Remuda Ranch, it is an all-women's facility dealing with eating disorders. This is a totally different environment of people and we do not want them in this area. A lot of people have properties and try to get them rezoned to make money, this will open a flood gate if you start allowing people to come in.

Ms. Robin McDermott said she lives about a quarter mile away from the facility, and the appearance is not a concern. The attorney talked a lot about Group Homes, but this is not a Group Home it's a Behavioral Health Facility. He didn't bring up many Behavioral Health Facilities except for Remuda Ranch which is an eating disorder facility. The facility they are proposing is for people with serious mental illness, such as schizophrenia, bipolar, and sexual maladaptive behavior. These are all issues they are advertising to help treat. She has high concerns for safety since she has a four year old and a six year old at home. There are only two bus stops in their whole community, and one is on Yearling. In the winter time the kids could be outside in the dark waiting for a bus outside a facility with security issues with these patients inside. This is a large safety concern for them. Ascend has lost several patients and it was documented in the police reports. The attorney talked about an inpatient facility, this is not an inpatient facility they are proposing it is a residential facility. The difference between the two, inpatient facilities have much higher levels of security where residential facilities have patients with much more freedom to roam around. There are violations on the property, and they have not shown any respect for the violations so far. They have had 15 to 20 cars parked outside at any given time, it is not acceptable when we are the ones paying thousands of dollars to keep our roads maintained. Ms. McDermott said one of her children is medically fragile and it is a big concern to have this facility so close. We are all very concerned.

Mr. Gerard said their attorney raised attention to the recent approvals for SUPs and it is a good example to bring up, because it speaks to the fact that special uses are not uses that are entitled to any zoning district they are special and reviewed on their own merits and the aspects of the case and location. He is familiar with all three cases that were brought up, with the most recent approval of Remuda Ranch, it's a facility south of Wickenburg and it's been there for decades. Their special use entitlement expired and they had to come in to get a new special use. It is in Rural-43 zoning and it's immediately located on Vulture Mine Road with very good access. This site sits on 40 acres and is a campus setting, it is well buffered and it's not 15 feet off of a residential lot line. Merrill Gardens at Anthem is in R1-18 zoning and it also sits on a campus like setting that's non-residential. All the single-family residences are across divided arterial roadways and on that R1-18 neighborhood there are churches and other types of institutional uses. To the south there is a 300 foot open space buffer before you get to a separate community that has no vehicular access from Anthem, called Desert Hills. There are residences on the south side of Desert Hills Drive. Crismon Peaks which is a very different example, it's a five lot split unregulated land division and it was designed as a contained subdivision. The idea the developer had would have these single-family residences that would act as Group Homes. It's an end of life facility and on a private street immediately off of Crismon Road. The private street is designed with architectural features, and designed with cul-de-sacs and pull-outs to facilitate emergency vehicles. It was approved, and it's adjacent to other residential lots to the north and west, and

he does not know if it is fully developed at this point. They are one acre lots in R1-35 and do have constraints with wastewater and septic, so even though they have the entitlement I know they have one Group Home and doesn't know if the other two have developed out. Yearling has significant elevational change in geometry that makes turn movements in a regular vehicle difficult and is blind sight, making it very complicated for emergency vehicles with very little access. As you go to the east the roadway is in a condition that you wouldn't want to cross it in a four-wheel drive.

Mr. Scharff said he would like to address a few of the issues that were raised by the members of the community. It is clear based on the letters and statements that were made that there's some incorrect assumptions being made leading people to fear for their safety. This is not a drug treatment facility. Ascend Behavioral Health and Wellness does run other facilities that provide drug treatment therapy, but not at this property. Online it shows the services that are provided by this entity, but it is not the services provided at this location. There has never been a resident with an ankle bracelet on ever at this facility, and no one living there is a convicted sex offender at this facility. It is not appropriate for these type of residents. They are not restricted and it's not an institution, it's for people with serious mental illness to gain those life coping skills in order to live an independent life. There's also been mention of police reports, and if the neighbor calls the sheriff they will come out and this leads to police reports. There are accusations of not wanting to comply, Ascend is in full compliance. Unfortunately the neighbors have complained to the Health Department and to the County that have led to a number of complaints. Each time Ascend has been in full compliance with all departmental responsibilities and requirements. If the neighbors are seeing people they think are affiliated with this facility in the neighborhood, perhaps they are making an incorrect assumption where they think somehow they are related. The individuals who live here do not roam around the neighborhood, it wouldn't be good for their structured environment. If someone does leave the facility unaccompanied which is extremely rare, the protocol is they are required by the ADHS to call the Sheriff's Office so there is documentation on how this was handled. It was mentioned in December 2016 someone left the property, and the Sheriff's Office was called by Ascend. This is mandated by law to keep their license. There was an accusation that the property owners are in bankruptcy and it is not true, but he does not know the Ranas financial history. The Ranas are a very hardworking family. It was raised not to reward someone with a violation case, but the Commission regularly approves Special Use Permits for properties that are in violation. Remuda Ranch Special Use Permit expired two years prior to the issuance two months ago and it wasn't until two years later that the County noticed it and issued a code violation. Mr. Scharff said his clients are very committed to this difficult mission serving a population with fears in the community. The residents love to live life too, they go on field trips to see Christmas lights, symphonies, camping trips, and have gone to Magic Mountain. They are residents that want to live life and deserve the same dignity as we all do. The Ranas are committed and would like to make this work, but the number of 16 residents somehow gives the Commission pause and asked if 14 residents be more appropriate. The Ranas are also committed to being a good neighbor, but it's difficult when there are strong feelings about places that you live, and it's difficult to create a bond when the neighbors are calling ADHS and the Sheriff's Office against you. It is important that this Commission issue consistent rules and

applications. He wants this to be reviewed, and the law to be applied as you applied it in the past.

Vice Chairman Andersen asked how many Sheriff's calls have been made. Mr. Scharff said he is not personally aware how many, other than the accusations in the opposition letters, but does recall one that was done by Ascend for a resident that left without supervision.

Vice Chairman Andersen asked what kind of security provisions they provide. Mr. Scharff said the residents aren't trying to escape, it's not a place where they are held against their will. They are residents with mental illnesses and they receive medication and treatment offsite under the supervision of doctors. They are mostly trying to learn coping schools with life, like reminders to brush their teeth and to be respectful to each other and their privacy. They don't have issues with people attacking each other it doesn't occur at the facility. He would like the Commission to go tour the facility, because it would help take away the stigma. It looks like any home we live in, it's a home he would like to live in.

Vice Chairman Andersen said he appreciates the information, but what he is trying to reconcile in his mind if the resident leaves the premises there has to be a Sheriff's call made by the facility, and asked what protocols do they have internally to prevent that from happening? Mr. Scharff said in order for the residents to be accountable they need to know where they are, so if a resident leaves they need to make sure there is a record that a person left. There's not as much of a stigma as the residents of the inpatient facility Remuda Ranch, but if an individual is being treated at Remuda Ranch they would have to follow the same protocol. They had reminders posted on the wall, but we were asked to take them down by the County because it undermined the family like environment. We don't want them to live in a place where they feel like they are trapped, that's not what this facility should be. It is not the nature of this facility to have some type of system to keep them in because they are not trying to leave.

Vice Chairman Andersen said comments were heard from some of the neighbors regarding negative impacts to the water situation and the maintaining of the private streets in the neighborhood, and asked for these issues to be addressed. Mr. Scharff said this is not a facility where there is a lot of traffic going in and out. The residents are not driving vehicles and there is minimal staff and not that much traffic, so he does not see where it is a major impact to the roads. The well was not an issue raised as concern by staff where it would deplete the current wells that are in place.

Commissioner Arnett said he had the same type of questions, and noted a lot of times when you come for a special use the neighbors get together and some come in support, but in this case a lot have come not in support and this changes the feel of it.

Commissioner Arnett asked how the meeting went with the neighbors, and what did you talk about with the group, and what were the outcomes with the water, traffic and security. Mr. Scharff said he came on as their attorney after the meeting occurred and it was held quite a long time ago. The application was filed in December 2016 and this case has been going on quite a while and he can't speak to that.

Chairperson Ruby asked staff if there was a neighborhood meeting. Ms. Sarnowski said there is no evidence from the applicant, Daniel Istrate that there was ever a meeting.

Chairperson Ruby asked if a neighbor outreach plan is a requirement for an SUP. Ms. Sarnowski said a meeting is not required, but it was recommended.

Mr. Gerard said the minimum citizen participation requirements are a site posting and a first class mailing within a 300 foot radius. We recommend a meeting particularly after there's raised opposition. Mr. Scharff said he apologized, he thought there was a meeting and he came on to this case after the process had occurred.

Commissioner Arnett said he is aware you don't have to have a neighborhood meeting, but that's how things can get done. Nobody dislikes what the applicants are doing, it's noble and it's a good facility, but there are some things to address and it seems like they have not even been talked about. There has not been any discussion with the neighbors. Mr. Scharff said the history of this case makes things a little more complicated which has made it difficult to speak to the neighbors. The County has taken an unprecedented step here and sued his clients. He said perhaps the Commission isn't aware of it but thinks it's important.

Chairperson Ruby said we're going to stop right there for a second, and let the County attorney speak.

Mr. Wayne Peck, Deputy County Attorney said he is involved in the litigation and is happy to elucidate this for the Commission if they are interested. Chairperson Ruby said since the applicant brought it up, and asked Mr. Peck for a 60 second summary.

Mr. Peck said the County did not take an unprecedented step, he has handled these before where we actually went to court to obtain an injunction to stop this operation. We received a favorable decision on January 2, 2018 telling this operation that it had to cease and desist. There have been at least five subsequent motions filed by the defendant, and we have a hearing tomorrow on the latest request for a stay. We have taken those actions after violations, after compliance agreements, and we followed all of the procedures we normally file as a last resort. The statute gives the County the right to go and seek an injunction to stop a violation and that's what we did. It's not unprecedented. The reason why he arrived late he was in court this morning resolving another case that was brought under the exact same statute.

Chairperson Ruby said to be clear, the injunction was related to the non-conforming land use that was happening and non-compliance of the zoning ordinance. Mr. Peck said, that's correct. The order that was eventually signed by the court recognized if the applicant were to obtain the SUP the violation would disappear and it would dissolve the injunction.

Mr. Scharff said the Ranas obtained a 2014 land use approval as an Assisted Living, when Ascend moved into operation and the Ranas thought they had a permit to operate a Group Home. There was a notice of violation issued, and signs went up for this Special Use Permit in 2016 then the neighbors became concerned, and they filed a

complaint and said they were operating as handicapped, and that's why there was another land use permit issued. There was a compliance agreement and the Ranas thought it would resolve all the problems by getting a new land use approval for a Group Home for the elderly 10 or fewer. They thought if they get it changed from elderly to handicapped they'd be okay. The County knew this was a Behavioral Health Facility and said it wasn't in compliance with the Group Home and that's why the lawsuit ensued. It was a very significant misunderstanding about what a land use approval meant. His clients tried to comply continuously and were told they don't have the right approval and paid the \$1,000 non-compliance fee. They thought getting that approval would resolve the issues and then they were sued by the County, and a notice of appeal was filed yesterday. It's been a very difficult and costly litigation and we are trying to do everything we can to comply.

Commissioner Arnett said you mentioned you are trying to comply, but you are not talking about a Group Home of 10 or less people with approved uses, you are talking about comply into what you want the use to be. You can have a Group Home with elderly people there, and is it the desired use or the use that is currently permitted. Mr. Gerard said what you can do in Rural-43 is a Group Home, their operation is a Group Care Facility and what they want to seek is an expanded Group Care Facility.

Commissioner Arnett said they can have a Group Home and can have people living there, but if it's beyond that then it needs an SUP. You are trying to comply on something you are not allowed to do. There wouldn't be a lawsuit if you are complying. Mr. Scharff said the County has taken a position that we cannot provide any sort of Group Therapy counseling even if we had 10 we could not comply.

Commissioner Arnett said you are trying to comply with something that you are not allowed to comply with. Mr. Scharff said yes.

Commissioner Hiatt asked Mr. Gerard to repeat his last statement again. Mr. Gerard said their existing operation is not a Group Home, it's a Group Care Facility and that requires a Special Use Permit whether it's below 10 or above 10. What they are seeking is to get that Group Care Facility approved, but a larger Group Care Facility rather than being limited to 10 they want to go up to 16.

Chairperson Ruby said if she is understanding this correctly, the Special Use Permit would be for greater than 10 residents and the treatment factor is not allowed in a Group Home. Mr. Peck said what the court found is not a Group Home because they were providing treatment, and these residents did not live as a single-housekeeping unit. What they are asking for is a SUP for a Group Care Facility and under the zoning ordinance there is no limit to the number of people you can have in a Group Care Facility. In their SUP, which requires a narrative and they would cap it at 16 because that is the number they can handle in this facility. If this were approved they would also need to amend their state license because their cap of 10. If it's approved going to 16 residents it might require some modifications to the building and then it would be an institution. The Commission does not need to be concerned with the number since they told you they are capped at 16, so the number isn't the issue it is what the facility is.

Chairperson Ruby said it's the treatment piece of this and it's prohibited under the Group Home ordinance. Mr. Peck said as found by the court, but not only would they be allowed to treat but the residents would not have to live as a single-housekeeping unit.

Mr. Gerard said staff's recommendation is based on land use concerns and when we speak about consistency, it's the consistent application of good planning practices and planned policies and furthering the preponderance goals in our plans. Special uses are just that, they are special and each case is judged by its own merit. In making that judgment, that's when you want to have consistent application of furthering goals, and that's what we presented today based on land use concerns.

Mr. Scharff said they are open to reducing that cap should there be concerns by the Commission, and if they were forced to just have 10 they would accept that, but believes the home can accommodate 12 or 14. This has been very costly for a small operation but they would be open to reducing the cap.

Chairperson Ruby said if they are wanting a continuance to take that proposal back to staff. She's not sure if that's what he was leading up to, but she's not making any suggestions. Mr. Scharff asked if a continuance is something the Commission would consider and discuss with staff.

Chairperson Ruby said she doesn't know if they will weigh in on that, as Mr. Peck said the number is not the primary concern.

Commissioner Arnett said he would not support a continuance since it is not about the number if that's their reason for a continuance. There are other issues to why they are here. Chairperson Ruby agreed.

Mr. Scharff said the one thing that has been significantly and heatedly debated between parties relates to the requirement that all Group Homes within Maricopa County have to have a state license, and the least restricted license you could get with people with a serious mental illness is Behavioral Health Residential Facilities. There are not any other Assisted Living licenses for people with serious mental illnesses. This has caught us in a catch-22 where the only licenses available with this type of disability means there cannot be Group Homes for individuals with these types of disabilities. If that is true and the court of appeals upholds it, there is a section of our population that cannot live in Group Homes because of their disability. I am sure the Commission finds that concerning.

Chairperson Ruby said the applicant and the owners have in good faith tried to be in compliance, but it is fairly well documented that there has been non-compliance with the land use and as far as the state that is not our purview. She has some concerns about expanding a use in a situation where the previous uses have not been recognized or honored.

Commissioner Arnett said we heard a lot of information today and of course they are concerned with people that need help, it's a great use and it's needed in our

community but just not here. In this situation it's a very different feel from some of the other facilities the Commission has approved because there's a whole bunch of people supporting it and encouraging in the stipulations. There has been some valid concerns that have come up and he stands with staff on this. The owners still can use the property as a legal use not just the use they are wanting to have. Staff has done a great job and the facility is gorgeous, but to do what they want to do in that location he is not in support of that.

Vice Chairperson Andersen said our purview today is fairly narrow, we are asked to determine whether specific things have been found that would justify granting this applicant a Special Use Permit to allow the specific use that they are applying for on this property. This Commission is being asked to determine if there are any adverse impacts to the health, safety or general welfare of the surrounding properties. This is why he asked questions about impacts to the security issues, the potential negative impacts to the road and traffic circulation, and the negative impacts to the aquifer and well situation in the area and that's what we're trying to determine. He believes we need to do a better job as a community providing care for individuals that struggle with emotional and mental health challenges. We're here to evaluate whether there's adverse impacts to the health, safety and general welfare of the neighbors, and he tries to give the applicant the benefit of the doubt and respects the well-articulated feelings of the neighbors.

Vice Chairperson Andersen asked if staff has any way to verify the Sheriff's calls or police reports in the area, and he would love to hear staff's thoughts on the situation of circulation, traffic, and adequate parking at the facility. Mr. Gerard said he has seen multiple police reports but that was nine months ago when we were meeting on negotiating the compliance agreement and he has not been provided any since, but believes there were five. Staff had parking concerns with the existing operation as it exists today, and in mid-August he witnessed a staff meeting occurring on site and there were 25 cars. It's a very inadequate road for anything other than a single-family residence or a Group Home with a single-family like setting. We have provided stipulations, the physical site layout, and we have technical sign-offs, and again from the land use perspective this institutional setting is 15 and 20 feet immediately adjacent to residential lot lines. Staff has concerns and recommends denial.

Commissioner Hiatt said the location is not an appropriate place for this kind of use. The need is great and we have approved it in other areas but with specifically different circumstances in those communities than the circumstances that exist here. He does sympathize with the operator but does not have a lot of confidence based on what he's heard today and the previous history. He also doesn't have a lot of confidence that they would operate in compliance within the narrative, because they haven't operated in compliance with the previous narratives. This all effects his decision.

Chairperson Ruby said the setback variances and the road conditions and the parking concerns specific to this applications merits give her pause. She does not see this as a proper location for this use.

Commissioner Montoya said she just got off the County Board of Health where she served eight years as a volunteer for District 5. She fully supports there's a need in our community to have facilities that meet the needs to mental health patients in this state and in the county. She also recognizes that the residences that live nearby have raised some serious sustainability issues and potential adverse impacts to this request to expand from 10 to 16 where she has some serious concerns about that. She concurs with the staff's recommendation that a Special Use Permit comes with its own set of requirements. You have to look at the special circumstances and have a higher bar because it has to meet certain requirements, and it has a special need for a special use. In this case it doesn't seem to meet that basic requirement.

COMMISSION ACTION: Vice Chairman Andersen motioned to deny Z2016091. Commissioner Hiatt second. Denied 6-0.

Chairperson Ruby adjourned the meeting at 11:25 a.m.

Prepared by Rosalie Pinney
Recording Secretary / Administrative Assistant
April 12, 2018